

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

November 19, 2008

BY E-MAIL AND U.S. MAIL

[REDACTED]
Washington, DC 20

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the "DC FOIA"), dated October 17, 2008 (the "Appeal"). We forwarded the Appeal to the District of Columbia Public Schools ("DCPS") with a request for a response. The DCPS responded by letter dated October 31, 2008 ("DCPS Response").

In your initial FOIA Request dated July 14, 2008, you sought copies of:

1. NCLB Mandated documentation showing the college degrees, majors, certification and "Highly Qualified" status of all current Ellington instructional personnel—including the media specialist;
2. The Duke Ellington School of the Arts Project (DESAP) and the Ellington Fund financial information for 2007-2008 and 2006-2007 fiscal years, including but not limited to 990 tax reports and all completed annual (audited, reviewed or compiled) or quarterly (reviewed or compiled) financial reports, such as Statement of Financial Position, Statement of Activities, Statement of Functional Expenses, Statement of Cash Flows, Notes to Financial Statements, Compliance Reports, Internal Control Reports, and Schedule of Findings and Questioned Costs. And the DESAP and Ellington fund projected budgets for 2008-2009 fiscal year, including subsequent modifications;

3. All student tracking documentation for the last ten years, including but not limited to admissions testing results, acceptance statistics, withdrawal and graduation statistics, college board scores, tertiary education matriculation and graduation statistics; and
4. All library/media center documentation for 2007-2008, including but not limited to current resource lists, circulation and use statistics.

DCPS acknowledged receipt of your FOIA Request through a letter dated July 14, 2008, and responded to your FOIA Request in a letter dated September 10, 2008, which was partially responsive to your request. In this letter, DCPS notified you it was attaching the materials it had in its possession that were responsive to your request and DCPS would need additional time to compile the other materials you sought and provided dates of approximate availability of these remaining materials.

On Appeal, Appellant challenges DCPS' response to his FOIA request. In summary, Appellant believes the DCPS response was only "partial" and DCPS is withholding responsive materials because DCPS never provided additional materials responsive to Appellant's FOIA request as DCPS indicated it would do in DCPS's September 10, 2008 letter.

Discussion

It is the public policy of the District government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body" *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534.

The DCPS Response stated it was not withholding additional records responsive to Appellant's FOIA request. Rather, the additional materials Appellant requested were not in DCPS' possession. D.C. Code § 2-502(18) defines the phrase "public record" to mean "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession or, of retained by a public body." Further, the DC FOIA defines the phrase "public body" to mean "the Mayor, an agency, or the Council of the District of Columbia." § 2-502(18A).

Under the DC FOIA, the District is only required to disclose materials if they were "prepared," "owned," "used in the possession of," or "retained by a public body." The issue therefore, is whether the Duke Ellington School of the Arts Project ("Duke

Ellington") and the Ellington Fund are "public bodies" making the disclosure of the requested materials in DCPS' possession concerning these entities mandatory. If these entities are public bodies, then DCPS is obligated under the DC FOIA to provide Appellant with the additional materials allegedly to have been withheld. However, if the entities are deemed not to be "public bodies" then DCPS has fully complied with the DC FOIA in its response to Appellant's FOIA request.

Turning to the definition of "public body," it is clear Duke Ellington and the Ellington Fund cannot be classified as either the Mayor or the Council of the District of Columbia. Therefore, the only remaining possibility is these entities being classified as "agencies" of the District. Here, it is clear Duke Ellington and the Ellington Fund are not agencies of the District. Rather, Duke Ellington is an accredited college preparatory school located in the District and the Ellington Fund is a 501(c)(3) non-profit organization promoting the educational mission and goals of Duke Ellington. As such both entities are separate and independent from DCPS and not subject to the authority of DCPS or any District agency. Because Duke Ellington and the Ellington Fund are not public bodies nor under the authority of any District agency, DCPS is not obligated to produce any records related to these entities under the DC FOIA. To the extent DCPS has produced some records related to these entities, it was not obligated to do so under the DC FOIA and has done so solely as a courtesy to Appellant.

Because we are satisfied Duke Ellington and the Ellington Fund are not "public bodies" and therefore, not subject to the DC FOIA, we UPHOLD the decision of DCPS in that DCPS provided Appellant with all materials in its possession which were relevant to Appellant's FOIA request.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



Runako Allsopp
Deputy General Counsel to the Mayor

cc: Nicole L. Streeter
Deputy General Counsel DCPS